

REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. Claims 1-22 remain pending in the case. Claims 1-22 are rejected.

35 U.S.C. §112, first paragraph

The Office Action states, “The specification fails to disclose that all sources are co-located with each other in the bank of sources...” Applicants respectfully disagree. Figures 1-5 depict sources that are co-located with each other in the bank of sources 12. Further, the term “bank of sources” that was used in original Claim 1 indicates that the sources associated with the bank are co-located.

The Office Action goes on to state, “As argued by applicant, power utilities do not provide a power source at a customer’s location...Applicant does not acknowledge that power utilities provide a source of power at each customer’s location.” Applicants do not disagree that a power utility provides power. Applicants respectfully state, that Applicants do not understand the cited art to teach, suggest, or render obvious two or more power utility companies residing at a single customer’s location and, therefore, Applicants do not understand the cited art to teach, suggest, or render obvious power utility companies providing a source of power at each customer’s location. Further, Applicants do not understand the cited art to teach, suggest, or render obvious that the two or more power utility companies, or any type of power source, would be co-located.

The Office Action goes on to state, “Applicant’s specification discloses that a first group of sources is an AC source. However, applicant’s specification does not disclose a power generation plant co-located with all of the sources in the bank of sources that generates the AC power source.” Applicants respectfully submit that Applicants would not have to disclose “a power generation plant” let alone disclose “a power generation plant co-located with all of the sources in the bank of sources that generates the AC power source” in order to provide enabling support for “wherein all of said sources are co-located with each other in said bank of sources.” Further, Figures 1-5 clearly depict

sources of power that are co-located with each other in a single bank 12. For at least these reasons, Applicants respectfully submit that Claims 1-22 comply with the written description requirement under 35 U.S.C. 112, first paragraph.

35 U.S.C. §102(b)

Claims 1, 7 and 22 stand rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent 6,191,500 by Toy (hereinafter referred to as “Toy”). Applicants have reviewed the asserted art and respectfully submit that the embodiments of the present invention as recited in Claims 1, 7, and 22 are not anticipated by Toy.

MPEP §2131 provides:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.”

Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

TOY

This section describes Applicants’ understanding of what Toy teaches. Toy states at Col. 3 lines 42-43, “Utility sources 110 may include a source of electric power generally referred to as a utility company.” Toy states at Col. 6 lines 14-16, “According to the present invention, power is supplied to UPS system 300 via two feeders from two utility sources 110 located remotely from one another” (emphasis added). Since Toy states that “According to the present invention...two utility sources 110 located remotely from one another” (emphasis added), Applicants understand Toy to teach that two of Toy’s utility sources “from the two utility sources 110,” are located remotely from each other for all of Toy’s embodiments.

DIFFERENCE BETWEEN TOY AND CLAIM 1

This section describes Applicants' understanding of at least some of the differences between what Toy teaches and the embodiment recited by Claim 1. As stated, Applicants understand Toy to teach that two of Toy's utility sources are located remotely from each other for all of Toy's embodiments. In contrast, Claim 1 recites, "wherein all of said sources are co-located with each other in said bank of sources."

Although Applicants believe that the embodiment recited by independent Claim 1 was not anticipated by Toy because Claim 1 already clearly recited "said bank of sources" and the term "bank," which indicates that the sources associated with the bank are co-located, for the sake of clarity and for the sake of expediting prosecution, Applicants have amended the embodiment recited by independent Claim 1 to explicitly recite "wherein all of said sources are co-located with each other in said bank of sources."

RESPONSE TO ARGUMENTS SECTION

The Office Action states on page 8, "Regarding point A, the examiner disagrees with applicant's contentions. Toy discloses that power is supplied to the system of figure 3 via two feeders from two utility sources located remotely from one another." First, Toy explicitly states "...two utility sources 110 located remotely from one another" (emphasis added). Based on the most common interpretation, the fact that the phrase "located remotely from one another" appears right after the phrase "two utility sources 110" indicates that "located remotely from one another" pertains to "two utility sources 110" instead of the two feeders. Second, Applicants respectfully submit that Toy states that Toy's feeders are "from" Toy's utility sources. If Toy's feeders are remotely located, then Toy's utility sources would also be remotely located. Third, just because Toy discloses a terminating Toy's feeders terminate in a transformer complete with switchgear (Col. 6 lines 19-20) does not indicate that Toy's two utility sources 110 are co-located since, for example, Toy clearly states at Col. 3 lines 42-44, "Utility sources 110 may include a source of utility power generally referred to as a utility company"

(emphasis added). Applicants respectfully submit that two or more utility companies would not be co-located.

SUMMARY

Therefore, Applicants understand the embodiment recited by Claim 1 to be patentable for at least the reason that Claim 1 recites, “wherein all of said sources are co-located with each other in said bank of sources.” For similar reasons, Applicants understand the embodiments recited by independent Claim 22 to be patentable in that independent Claim 22 recites “wherein all of said sources associated with said first group and said second group are co-located with each other.”

Claim 7 depends on independent Claim 1. Claim 7 includes all of the features of independent Claim 1. Therefore, Claim 7 should be patentable for at least the reasons that independent Claim 1 should be patentable.

35 U.S.C. §103(a)

Claims 2-6 and 9-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Toy in view of U.S. Patent No. 5,861,684 by Slade et al. (referred to hereinafter as “Slade.”) Applicants have reviewed the asserted art and respectfully submit that the embodiments of the present invention as recited in Claims 2-6 and 9-21 are patentable over Toy and Slade, alone or in combination.

Applicants respectfully submit that “[i]t is improper to combine references where the references teach away from their combination” (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Applicants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984)). Applicants respectfully submit that there is no motivation to combine the

teachings of Toy and Slade, because Toy teaches away from the suggested modification.

Both independent Claims 1 and 11 recite, “wherein all of said sources are co-located with each other in said bank of sources.” Since Applicants understand Toy to teach that two of Toy’s utility sources are located remotely from each other for all of Toy’s embodiments, Applicants understand Toy to teach that two of Toy’s utility sources are required to be located remotely from one another. Requiring two of Toy’s utility sources to be located remotely from each other teaches away from “wherein all of said sources are co-located with each other in said bank of sources.” Since Toy teaches away from “wherein all of said sources are co-located with each other in said bank of sources,” as recited by Claim 1 Slade cannot be combined with Toy to remove the deficiency in Toy. Further, the Office Action does not assert that Slade teaches the embodiments recited by independent Claims 1 and 11. Therefore, neither Toy nor Slade, alone or in combination, teach, suggest, or render obvious “wherein all of said sources are co-located with each other in said bank of sources,” as recited by independent Claims 1 and 11.

In the response to arguments section on page 9, the Office Action states, “...Toy discloses that the utility source could be any source of electric power that is normally used to provide power to critical load 230 (computer systems) at column 4, lines 42-44.” Applicants respectfully submit that Toy also states at Col. 6 lines 15-16, “According to the present invention...two utility sources 110 located remotely from one another...” Therefore, Applicants understand Toy to teach that a utility source could be “any source of electrical power that is normally used to provide powers” so long as at least two of the utility sources 110 “are located remotely from one another.”

Claims 2-6 and 8-10 depend on independent Claim 1. Claims 12-21 depend on independent Claim 11. These dependent claims include all of the features of their respective independent claims. Therefore, these dependent claims should be

patentable for at least the reasons that their respective independent claims should be patentable.

CONCLUSION

Based on the arguments presented above, Applicants respectfully assert that Claims 1-22 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

Dated: 03/17/2009 _____ /John P. Wagner, Jr./ _____

John P. Wagner, Jr.
Registration No. 35,398

Address: Westridge Business Park
123 Westridge Drive
Watsonville, California 95076 USA

Telephone: (408) 377-0500 Voice
(408) 234-3649 Direct/Cell
(831) 722-2350 Facsimile